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MT LEGISLATIVE HISTORY

Chapter 408 1991

Bill H 952 S _____ Original bill & hist. ✓ C

H. Committee on Natural Resources		S. Committee on Local Government	
Hearing Date(s) Feb 22	✓ C	Hearing Date(s) Mar 19	✓ C
_____	___ C	Mar 21	✓ C
_____	___ C	_____	___ C
_____	___ C	_____	___ C
Date Out Feb 23	✓ C	Mar 22	✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

LC 2019/01

House BILL NO. 952

INTRODUCED BY Casey Ream Farrell Buckley Grosfield Friedt Van Valkenburg Pinsonault Mercer Thane Bennett Fuchs

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING SAND AND GRAVEL OPENCUT MINES AND CONCRETE AND ASPHALT PROCESSING FACILITIES TO COMPLY WITH APPLICABLE LOCAL ZONING REGULATIONS; AMENDING SECTIONS 76-1-113, 76-2-209, 82-4-431, AND 82-4-432, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-1-113, MCA, is amended to read:

"**76-1-113. Effect of chapter on natural resources.** ~~Nothing~~ (1) Except as provided in subsection (2), nothing in this chapter ~~shall~~ may be ~~deemed~~ considered to authorize an ordinance, resolution, or rule ~~which~~ that would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are subject to the zoning regulations adopted under Title 76, chapter 2."

Section 2. Section 76-2-209, MCA, is amended to read:

"**76-2-209. Effect on natural resources.** (1) ~~No~~ Except as provided in 82-4-431 and 82-4-432, a resolution or rule adopted pursuant to the provisions of this part, except 76-2-206, ~~shall~~ may not prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are subject to the zoning regulations adopted under this chapter."

Section 3. Section 82-4-431, MCA, is amended to read:

"**82-4-431. Contract for reclamation required.** (1) After March 16, 1973, ~~no~~ an operator may not conduct opencut-mining operations which will result in the removal of 10,000 cubic yards or more of product or overburden until he has entered into a contract with the board for the reclamation of the land affected. An operator conducting a number of operations, each of which results in the removal of less than 10,000 cubic yards of product or overburden but which result in the removal of 10,000 cubic yards or more of product or overburden in the aggregate, is subject to the provisions of this part, except as provided in this section.

(2) (a) Except as provided in or conditioned under

INTRODUCED BILL
HB 952

subsections (2)(b) and (2)(c), an operator who holds a contract for reclamation may operate an opencut mine without first securing an additional contract or an amendment to the existing contract or bond if the mine meets the following criteria:

(i) the total amount of material and overburden removed does not exceed 1,000 cubic yards; and

(ii) the operator notifies the department of state lands prior to beginning such operations and, within 30 days of notifying the department, submits a completed site information form, salvages and stockpiles all root-bearing soil materials, regrades the affected area to 3:1 or flatter slope and blends the reclaimed area into the adjacent topography, and during the first appropriate growing season replaces all topsoil and reseeds or revegetates as required by the department.

(b) The department may refuse to allow the operator to operate an opencut mine under subsection (2)(a) if, at the time of notification by the operator to the department, the operator has a pattern of violations or is in current violation of this part or rules adopted under this part or provisions of a contract for reclamation.

(c) The department may require an additional bond as a condition for the operation of an opencut mine under subsection (2)(a).

(3) Opencut mines described in subsection (2) may not be placed in flowing, ephemeral, or intermittent streams, in the bottom or head of a confined drainage, in an area where the operation will intercept ground water or intercept any slope that is naturally steeper than 3:1, or in any area where mining would be restricted by other laws.

(4) Sand and gravel opencut mines must meet applicable local zoning regulations adopted under Title 76, chapter 2."

Section 4. Section 82-4-432, MCA, is amended to read:

"82-4-432. Application for contract -- contents -- issuance -- amendment. (1) Applications for a contract ~~shall~~ must be made upon a form furnished by the board~~, which~~. The form ~~shall~~ must contain the following:

(a) the name of the operator and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the volume of earth to be removed, as accurately as the volume may then be estimated, and the volume which has been previously removed, if any;

(d) the location of the operation by legal subdivision, section, township and range, and county;

(e) the date when the operation was or will be commenced; and

(f) a statement that the applicant has the right and power by legal estate owned to mine by opencut mining the

lands so described.

(2) The application ~~shall~~ must be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

(b) a fee of $50; ~~and~~

(c) a statement from the local governing body having jurisdiction over the area to be mined certifying that a proposed sand and gravel opencut mine and its operating and reclamation plans comply with applicable local zoning regulations adopted under Title 76, chapter 2; and

~~(c)~~(d) the operator's plan of his operation and the method and manner of reclamation that will be used or followed.

(3) If, prior to applying for a contract, the operator notifies the board of his intention to submit a plan and requests the board to examine the area to be mined, the board shall cause the area to be examined and make recommendations to the operator regarding reclamation.

(4) Upon receipt of the application, bond or security, and fee due from the operator and upon agreement to the terms of the contract by the parties, the board may issue a contract to the applicant which entitles him to continue in or engage in opencut mining on the land therein described.

(5) An operator desiring to have his contract amended to cover additional contiguous or nearby land may file an

amended application with the board. Upon receipt of the amended application and such additional bond as may be required and upon agreement to the terms of the amendment by the parties, the board may issue an amendment to the original contract covering the additional land described in the amended application without the payment of any additional fee.

(6) An operator may withdraw any land covered by contract, except affected land, by notifying the board thereof, in which case the penalty of the bond or security filed by the operator pursuant to the provisions of this part shall be reduced proportionately."

NEW SECTION. **Section 5. Saving clause.** [This act] does not affect rights and duties that matured or penalties that were incurred before [the effective date of this act].

NEW SECTION. **Section 6. Applicability.** [This act] applies to any area for which the right to mine is granted by issuance of a contract or contract amendment pursuant to 82-4-432 after [the effective date of this act].

NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0952, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill requires sand and gravel opencut mines and concrete and asphalt processing facilities to comply with applicable local zoning regulations.

ASSUMPTIONS:

1. The Department of State Lands and the Department of Commerce can implement this bill with existing resources.

FISCAL IMPACT:

No fiscal impact.

2-23-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2/25/91
BOB RANEY, PRIMARY SPONSOR DATE

Fiscal Note for HB0952, as introduced

HB 952

2/25	FISCAL NOTE PRINTED		
3/11	HEARING		
3/13	TABLED IN COMMITTEE		

HB 952 INTRODUCED BY RANEY, ET AL.
REQUIRE SAND AND GRAVEL OPERATIONS TO COMPLY WITH LOCAL ZONING

2/20	INTRODUCED		
2/20	REFERRED TO LOCAL GOVERNMENT		
2/20	FIRST READING		
2/20	REREFERRED TO NATURAL RESOURCES		
2/21	FISCAL NOTE REQUESTED		
2/22	HEARING		
2/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/25	FISCAL NOTE PRINTED		
2/25	FISCAL NOTE RECEIVED		
2/26	2ND READING PASSED	73	26
2/27	3RD READING PASSED	71	28
	TRANSMITTED TO SENATE		
2/27	REFERRED TO LOCAL GOVERNMENT		
3/04	FIRST READING		
3/19	HEARING		
3/22	COMMITTEE REPORT—BILL NOT PASSED		
3/22	ADVERSE COMMITTEE REPORT ADOPTED	32	16
3/22	RECONSIDERED ADOPTION OF ADVERSE COMMITTEE REPORT	37	11
3/25	MINORITY COMMITTEE REPORT ADOPTED—BILL DO PASS		
3/28	2ND READING CONCURRED	26	22
4/01	3RD READING CONCURRED	30	20
	RETURNED TO HOUSE		
4/04	SIGNED BY SPEAKER		
4/04	SIGNED BY PRESIDENT		
4/05	TRANSMITTED TO GOVERNOR		
4/09	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 408	EFFECTIVE DATE: 4/09/91	

HB 953 INTRODUCED BY S. RICE, ET AL.
APPROPRIATE FUNDS FOR ANNUAL INSPECTIONS OF COSMETOLOGICAL ESTABLISHMENTS
BY REQUEST OF HOUSE BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

2/20	INTRODUCED		
2/20	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
2/20	FIRST READING		
2/25	REREFERRED TO APPROPRIATIONS		
3/08	HEARING		
3/13	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/14	REREFERRED TO APPROPRIATIONS		
3/15	TAKEN FROM COMMITTEE AND PLACED ON 2ND READING		
3/16	2ND READING PASSED	88	1
3/19	3RD READING PASSED	85	9
	TRANSMITTED TO SENATE		
3/20	FIRST READING		
3/20	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
4/01	HEARING		
4/02	COMMITTEE REPORT—BILL CONCURRED		
4/04	2ND READING CONCURRED	49	0
4/05	3RD READING CONCURRED	47	3
	RETURNED TO HOUSE		
4/12	SIGNED BY SPEAKER		

Paul Sihler, Environmental Quality Council
Lisa Fairman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HB 952

Presentation and Opening Statement by Sponsor:

REP. BOB RANEY, HD 82 - Livingston, stated HB 952 is an act requiring sand and gravel opencut mines and concrete and asphalt processing facilities to comply with applicable local zoning regulations.

Proponents' Testimony:

Alice Tully, Missoula, stated that she represents her neighborhood, located west of Missoula adjacent to city limits. She said it has been a zoned neighborhood since 1970. In 1982, the first public hearing was held for a proposed sand and gravel operation. The operation was allowed to proceed. County commissioners took the neighborhood complaints to the district court and on to the state Supreme Court. Both courts ruled that the statute exempted all mining operations from zoning and planning authority and the gravel pit was allowed to develop. It has been expanded twice. A public hearing was held a week ago for the third expansion. A second gravel pit has opened adjacent to the original gravel pit. The sand and gravel operation has affected property values. There is noise and dust pollution. The potential exists for more sand and gravel operations to go in, and residents feel those operations do not belong in a zoned residential neighborhood. Most states regulate sand and gravel operations through zoning. HB 952 only affects new operations. It does not eliminate existing operations. It also does not preclude a sand and gravel operation from getting a zoning variance to do a short term job. The bill does not force zoning, but where zoning is in place, residents may protest an operation. Ms. Tully urged support of HB 952.

REP. RANEY discussed the amendments for the bill which address concerns of opponents. **EXHIBIT 1.** In the amendments, land presently owned by an operator of a gravel pit who has contiguous lands will be able to file a form with the Department prior the January 1, 1992. The form documents the intentions to mine that property in the future and will effectively grandfather in the additional land. Any permit application prior to this date will be grandfathered in.

Opponents' Testimony:

David Sutton, Sletten Construction, opposed HB 952. The zoning board involvement would jeopardize a timely permitting process which is necessary on many projects. The bill includes plants and plant sites, and Sletten Construction is concerned about circumstances arising necessitating relocation of these plants. Air and water regulations apply to these plants. HB 952 is a duplication of regulations.

Ken Dunham, Montana Contractor's Association, opposed HB 952. He stated that he would like to see regulation left to State Lands. Adding an agency for construction companies to go through to locate sand and gravel or paving operations creates difficulty in getting work done on time. Construction costs will increase for both public and private jobs because of the longer haul distances.

Ed Maronick, President, Helena Sand and Gravel, opposed HB 952.

Questions From Committee Members: none

HEARING ON HOUSE BILL 641

Presentation and Opening Statement by Sponsor:

REP. DICK KNOX, HD 29 - Winifred, said this bill will clarify which landowners will be affected within the area to be mined. Second, it expands the area of notification by one-half mile around the perimeter around the permit area, recognizing there will be impact on landowners within one-half mile of an active mine. Third, it will reveal the source of the applicant's legal right to mine the mineral. No hidden agenda is in this bill. It is designed to increase the number of landowners that would be involved in the permit process, and to increase the amount of pertinent information available to all those affected by the permit. This will accomplish important things to the landowner and to the miner. It provides important information to the landowner at the inception of the process, gets all parties involved early in the process. This is in the best interest of mine operators, landowner and community in which proposed mine is to be located. He proposed amendments to the bill. **EXHIBIT 2**

Proponents' Testimony:

Ward Shanahan, Stillwater Mining Company, supported HB 641 and proposed amendments. **EXHIBIT 3.** He stated that under the Hardrock Reclamation Act, processing facilities and mining

absent for voting.

Motion: **REP. COHEN MADE A SUBSTITUTE MOTION THAT HB 838 DO PASS AS AMENDED.**

Discussion:

REP. HOFFMAN stated that he has to vote against the bill because of the potential of the costs to local governments. **REP. GILBERT** stated he has the same concern. The bill prohibits, after January 1993, certain products, then prohibits yard waste, aluminum, glass, and corrugated paper by 1997. Logistically, local governments will not be able to do all the requirements.

Vote: Motion that HB 838 as amended do pass carried 11-6 with Reps. Nelson, Hoffman, Foster, Gilbert, Ellison voting no.

EXECUTIVE ACTION ON HB 858

Motion: **REP. GILBERT MOVED HB 858 DO PASS AND BE PLACED ON THE CONSENT CALENDAR.**

Discussion:

REP. DOLEZAL asked what Rep. Gilbert envisioned happening with this bill. **REP. GILBERT** said the Department will write the rules and the bill will be implemented right along with the integrated waste management plan. Household hazardous waste was left out of the integrated bill. The funding will come out of SB 209. **REP. DOLEZAL** asked how will this happen in the education system. **REP. GILBERT** responded that the Department will do it in conjunction with the integrated waste management program. **REP. DOLEZAL** stated that he agreed with the concept, but that it is unrealistic to expect a classroom teacher to do the education.

Vote: Motion carried 17-0.

EXECUTIVE ACTION ON HJR 36

Motion/Vote: **REP. TOOLE MOVED HJR 36 DO PASS AND BE PLACED ON CONSENT CALENDAR.** Motion carried 17-0.

EXECUTIVE ACTION ON HB 926

Motion/Vote: **REP. HOFFMAN MOVED HB 926 DO PASS AND BE PLACED ON THE CONSENT CALENDAR.** Motion carried 17-0.

EXECUTIVE ACTION ON HB 952

Motion: **REP. RANEY MOVED HB 952 DO PASS.**

Motion/Vote: **REP. RANEY** moved to adopt the amendments. **EXHIBIT 33.** Motion carried 17-0.

Motion/Vote: **REP. RANEY MADE A SUBSTITUTE MOTION THAT HB 952 DO PASS AS AMENDED.** Motion carried 15-2 with Reps. Knox and Hoffman voting no.

EXECUTIVE ACTION ON HB 641

Motion: **REP. KNOX MOVED HB 641 DO PASS.**

Motion: **REP. KNOX** moved to adopt the amendments. **EXHIBIT 34**

Discussion: **REP. KNOX** said the DSL amendments are necessary because DSL is not the agency that has the authority to verify the legal aspect of the mining company's right to mine. The second portion defines that it will be effect within the permit area only.

Vote: Motion to adopt the amendments carried 17-0.

Motion: **REP. KNOX MOVED HB 641 DO PASS AS AMENDED.** Motion carried 17-0.

EXECUTIVE ACTION ON HB 855

Motion: **REP. SOUTHWORTH MOVED HB 855 DO PASS.**

Motion: **REP. BROOKE** moved to adopt the amendments. **EXHIBIT 18**

Discussion: **REP. O'KEEFE** stated the amendments will make the bill an appropriations bill. **REP. RANEY** said that he would like to hold the bill until a later date. **REP. GILBERT** supported the amendments because of he has concerns about the added cost to government and availability of the items.

Vote: Motion to adopt amendments carried 17-0.

Motion/Vote: **REP. RANEY MADE A SUBSTITUTE MOTION THAT THE COMMITTEE PASS CONSIDERATION ON HB 855.** Motion carried 17-0.

EXECUTIVE ACTION ON HB 799

Motion: **REP. FOSTER MOVED HB 799 DO PASS.**

Discussion: **REP. SOUTHWORTH, RANEY,** and **HOFFMAN** stated that they

HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 2-22-91

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓		
REP. BOB GILBERT	✓		
REP. BEN COHEN	✓		
REP. ORVAL ELLISON	✓		
REP. BOB REAM	✓		
REP. TOM NELSON	✓		
REP. VIVIAN BROOKE	✓		
REP. BEVERLY BARNHART			
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. DAVID HOFFMAN	✓		
REP. DICK KNOX	✓		
REP. BRUCE MEASURE	✓		
REP. JIM SOUTHWORTH	✓		
REP. HOWARD TOOLE	✓		
REP. DAVE WANZENRIED	✓		
REP. BOB RANEY, CHAIRMAN	✓		

CS05NATRES.MAN

HOUSE STANDING COMMITTEE REPORT

February 23, 1991

Mr. Speaker: We, the committee on Natural Resources report that House Bill 952 (first reading copy -- white) do pass as amended.

Signed: _____
Bob Raney, Chairman

And, that such amendments read:

1. Page 6, lines 13 through 15.
Following: line 12
Strike: section 5 in its entirety
Renumber: subsequent sections

2. Page 6, line 16.
Following: "Applicability."
Insert: "(1)"

3. Page 6, lines 17 through 19.
Following: line 16
Strike: lines 17 through 19 in their entirety
Insert: "does not apply to:

(a) an area for which a contract was issued prior to [the effective date of this act] or for which an application for contract or contract amendment was filed with the department of state lands prior to February 23, 1991; or

(b) an area:

(i) that is contiguous to an area described in subsection (1)(a);

(ii) for which the holder of the contract has the legal right to mine on [the effective date of this act]; and

(iii) for which the contract holder files with the department on or before January 1, 1992, on a form provided by the department, a legal description of the area, evidence of the legal right to mine, and certification that the contract holder holds the property for the purpose of future sand or gravel mining.

(2) Before June 1, 1991, the department shall mail notice of the provisions and passage of [this act] and the form described in subsection (1)(b)(iii) to each person who holds a current contract on [the effective date of this act] or who had, prior to February 23, 1991, submitted an application for contract

or contract amendment that the department had not approved or denied as of February 23, 1991.

(3) The department shall maintain a list of areas for which certifications have been filed pursuant to subsection (1)(b) and shall provide a copy of the list to any person who requests the list."

EXHIBIT 1
DATE 2-22-91
HB 952

AMENDMENTS TO HB 952
(First Reading Copy)

1. Page 6, lines 13 through 19.
Following: line 12
Strike: Section 5 in its entirety
Renumber: subsequent sections

2. Page 6, line 16.
Following: "Applicability."
Insert: "(1)"

3. Page 6, lines 17 through 19.
Following: line 16
Strike: lines 17 through 19 in their entirety
Insert: "does not apply to:

(a) an area for which a contract was issued prior to [the effective date of this act] or for which an application for contract or contract amendment was filed with the department prior to February 23, 1991; ~~and~~ or

(b) an area:

(i) that is contiguous to an area described in (a);

(ii) for which the holder of the contract has the legal right to mine the area on [the effective date of this act], and

(iii) for which the contract holder files with the department on or before January 1, 1992, on a form provided by the department, a legal description of the area, evidence of the legal right to mine, and certification that the contract holder holds the property for the purpose of future sand or gravel mining."

(2) Before June 1, 1991, the department shall mail notice of the provisions and passage of [this act] and the form described in (1)(b)(iii) to each person who holds a current contract on [the effective date of this act] or who ~~has~~, prior to February 23, 1991, submitted an application for contract or contract amendment which the department had not granted or denied on February 23, 1991.

(3) The department shall maintain a list of areas for which certifications have been filed pursuant to (1)(b) and shall provide a copy of the list to any person who requests it."

-End-

EXHIBIT 22
DATE 2-2-91
HB 952

Amendments to House Bill No. 952
First Reading Copy

Requested by Rep. Raney
For the Committee on Natural Resources

Prepared by Gail Kuntz
February ~~23~~ 22, 1991

1. Page 6, lines 13 through 15.
Following: line 12
Strike: section 5 in its entirety
Renumber: subsequent sections

2. Page 6, line 16.
Following: **"Applicability."**
Insert: "(1)"

3. Page 6, lines 17 through 19.
Following: line 16
Strike: lines 17 through 19 in their entirety
Insert: "does not apply to:

(a) an area for which a contract was issued prior to [the effective date of this act] or for which an application for contract or contract amendment was filed with the department of state lands prior to February 23, 1991; or

(b) an area:

(i) that is contiguous to an area described in subsection (1)(a);

(ii) for which the holder of the contract has the legal right to mine on [the effective date of this act]; and

(iii) for which the contract holder files with the department on or before January 1, 1992, on a form provided by the department, a legal description of the area, evidence of the legal right to mine, and certification that the contract holder holds the property for the purpose of future sand or gravel mining.

(2) Before June 1, 1991, the department shall mail notice of the provisions and passage of [this act] and the form described in subsection (1)(b)(iii) to each person who holds a current contract on [the effective date of this act] or who had, prior to February 23, 1991, submitted an application for contract or contract amendment that the department had not approved or denied as of February 23, 1991.

(3) The department shall maintain a list of areas for which certifications have been filed pursuant to subsection (1)(b) and shall provide a copy of the list to any person who requests the list."

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. 952

DATE 2-22-91 SPONSOR(S) Raney - Zoning ~~to~~ Sand & gravel

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
David Hatten	Hatten Consultant		—
[illegible]	Tucson Gravel - Hatten Rep	✓	
KEN DUNHAM	MT CONTRACTORS' ASSOC		✓
Ed MIRONICK	HELENA Sand & Gravel		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

put him out of business, but that is a district with less than 1000 people. We are not trying to put anyone out of business. Did you notice, but all the little companies have been bought up by TCI, so we are subject to TCI. There is not free enterprise here. The small ones have goals of getting there system built up enough to make TCI buy them. He wished them well. He did feel the public should have the opportunity to compete against them. Why not? If we are going to have go out, not take tax dollars because this will be people who willingly want to go into this district. If you put your name on the line then you are liable for it. He told a little anecdote. Al Doherty was here who used to throw this smoke and mirrors, and former Senator Harrison was here, and he worked this committee, so he closed his eyes and pretended Harrison was Doherty. Representative Menahan asked the committee give this a Do Pass, and put it on the floor so people can discuss this and the public can see. If the public could be here today he said he would have the most people here, but he did not have that many employees to bring in.

HEARING ON HB-952

Presentation and Opening Statement by Sponsor: Representative Bob Raney, District 82, said that if they pass this bill Senator Farrell has agreed to carry it. This bill will provide for a requirement that sand and gravel open cut mines and concrete and asphalt processing facilities comply with local zoning regulations. The main protest to this over the years has been that it would be extremely hard on existing gravel operations. So we tried to take care of that concern. He hoped that everyone was familiar with what it would mean to put sand and gravel operations in the local zoning laws. What is different from past proposals, is trying to protect existing operators. You will find this on the bottom of Page 6 through Page 7. These are amendments that were added by the House Natural Resources Committee, and this whole bill is a Committee Bill from the House Natural Resource. The language will prevent a run on applications, so people trying to beat the enactment of the law. It then provides that present sand and gravel open cut operators who have contiguous land that they anticipate mining on in the future can notify the department on a form. They will then state that they do in fact own the land, and do in fact intend to mine on it in the future. By doing this we will protect the existing operators.

Proponents' Testimony: Alice Tulley, representing her neighborhood on Mullan Road in Missoula, which is located just west of Missoula, and in the 70's it was zoned single family residential neighborhood. In 1982, we had a public hearing for a proposed gravel pit. Even though everyone opposed it the gravel pit was allowed to proceed and be built. This was against all

the neighbors protests. The county commissioners, on the residents' behalf, tried to stop the gravel pit, and they pursued through the district court and onto the State Supreme Court with no success. Presently, our state statute exempts all mining operations of these regulations. In 1987, this gravel pit was given an Air Contamination Permit to operate an asphalt batch plant and now, a concrete plant. Directly adjacent to the plant, is another gravel plant has gone in. Each time the residents have protested and spoke out against each expansion, but continually they have been told that they have no rights under present Montana law. She reiterated that the neighborhood was zoned residential in the 70's, and so this people bought homes that they felt would be in a protected area. They are not against sand and gravel operations, but there are appropriate locations for them. A zoned residential neighborhood is not an appropriate location for these operations. Most states regulate sand and gravel operations through the zoning process. She gave a fact sheet on what HB-952 will do and what it won't do (Exhibit #17). Property value adjacent to these plants has been devalued. Even though reclamation plans call for wonderful parks or a housing development around a lake that was a gravel pit, this is in the future. A gravel pit life expectancy of 15-30 years is a long time to live with the dust, noise, etc. before we see a park, or new housing development in that area. We know we will not get rid of what they have, but this gives them the say in any future sand and gravel developments that may pop up in residential areas. Counties that do not have zoning are not affected, but Missoula has zoning in place before the gravel proposal. Billings, Bozeman, Missoula, Livingston, and other urban areas are the ones that have had these problems. She urged the committee to Do Pass HB-952 because it is needed.

Linda Stoll-Anderson, County Commissioner, Lewis and Clark, was representing Montana Association of Counties (MACo), said she had experience in Lewis and Clark County with this. This afternoon there was a hearing on Special Zoning District #40 in Lewis and Clark County. Since last session, everyone has found out that sand and gravel operations are exempt from zoning, and she has been asked to point out that Lewis and Clark County has 40 special zoning districts. They are all special zoning districts that came to us at the request of the people living in them. They all envision certain restrictions they want like residential, 5 or 10 acre parcels, etc. None of them would believe her if she said that despite their action that they took to create that special zoning district and describe in detail the environment they want a sand and gravel operation can go in there despite their protests. It is more important with this special district #40 because this is in the Missouri River corridor, and as that corridor gets developed as a source for gravel these people need to know this. It is real important that the committee ask why sand and gravel operations should be exempt from that zoning?

Opponents' Testimony: Ken Dunham, Montana Contractors'

Association opposed this bill (Exhibit #19).

Paul Miland Foster, United Industry, opposed this bill (Exhibit #20). He defied Ms. Tulley or anyone else to refute that his operation has been sensitive to the needs of their neighbors. They operate at certain hours and not others, they keep the noise down at certain times, etc.

Meredith Rieter, Empire Sand & Gravel, said he agreed what Mr. Foster has said about the state lands, and the extent of what they have done in making it easier to open gravel pits. We know the rules and regulations that will be enforced. He added that he had a problem understanding how these local zoning boards are going to handle this. You can go to the extreme from where they will ban an operation to the other end where they could supersede state law and make it easier than is already on the books. Nothing in this bill says they can't do that. We could end up with worse situations. His advise to the committee is that there is a system that works well, don't fix it.

Timothy Barnard, President, Barnard Construction opposed this bill by letter (Exhibit #21).

Amiel Schaff, Vice President, Fisher Manufacturing opposed this bill by letter (Exhibit #22).

Ken Ruggles, Livingston Ready Mix, Inc., opposed this bill by letter (Exhibit #23).

Jim Gilman, President, Jim Gilman Excavating Inc., opposed this bill by letter (Exhibit #24).

D.A. Peressini, President, Washington Construction Company, opposed this bill by letter (Exhibit #24).

W.T. Oftedal, President, E. H. Oftedal & Sons, opposed this bill by letter (Exhibit #26).

James McDonald, President, Jim's Ready Mix, opposed this bill by letter (Exhibit #27).

Harold Gierke, President, Portable Paver, Inc., opposed this bill by letter (Exhibit #28).

Senator Ethel Harding, District 25, opposed this bill. Due to the time she will give her opinion during Executive Action.

Questions From Committee Members:
Senator Hammond asked if gravel is tough to find? Ms. Tulley said that she is aware that gravel is scarce. Missoula County Commissioners often grant sand and gravel operators a "short term pit." They go in and do a short term job, 60-90 days, and if they needed to get gravel from a residential area that could go

in and apply for a zoning variance. It would not take any longer to get a zoning variance than the current process. This does not put another layer of regulation. If a city or county puts zoning in, and the zoning board does not have a problem allowing the sand and gravel in a zoned residential area, then it would be permitted. As it stands now, each county is allowed to set up what is permitted within their zoning regulations and what fits each particular county.

Senator Bengtson asked Ms. Tulley if she has seen improvement over the years as to the reclamation of gravel pits, and the limitation on expansion, the air quality? Ms. Tulley said no not in her area. Literally in her area, the sand and gravel operation was given, not an Air Quality Permit, but an Air Contamination Permit. They knew they would be contaminating the air in the Missoula Valley by running the asphalt batch plant, the concrete plant, and the sand and gravel operation. There has been a problem with the gravel pit, and she was sure Mr. Welch can address that concern over the reclamation of the one gravel pit. We have had problems, and he has not been doing what he stated. She has been told that there are gravel pits around the state in residential areas that look really nice and aren't noticed. This is not the case in her neighborhood. Mr. Foster said his new pit in Missoula is not in his own residential area, it is zoned in an area that permits sand and gravel.

Senator Bengtson asked Mr. Welch about the problems he's faced, and are we having a state wide problem with gravel pits? Mr. Welch said that it is state wide, but not wide spread. The instances come up a couple times a year, and usually in more populated areas.

Senator Hammond said he has the opposite question. In his area they open and shut the gravel pit to take care of the road. Mr. Welch said that is not a requirement of the Opencut Mining Act, and in fact it is not the best way to utilize the facility for a county. Opening and closing reduces the effectiveness of reclamation. Senator Hammond said they have been told to operate it this way. Mr. Reiter said that he could answer that. It is important to understand that to leave it open somebody must continue the bond. If Empire Sand and Gravel opens pits for highway projects, and if they want to leave the pit open or the county wants it, then the county must assume the bonding for the area that is open. A landowner can also assume it, but many times they do not want to assume it, so they are open and closed. When Empire is done, they have to complete the area and reseed it to release their bond. Mr. Welch said that counties do not post bonds, and often times they have locations that they utilize for years for a section of the road. What Mr. Reiter said is true when the gravel is used, and the company is done, it must be closed or someone else must assume reclamation.

Senator Harding asked Alice Tulley what she would consider an "appropriate site" for a sand and gravel operation? Ms. Tulley

said an appropriate area is not in a zoned residential neighborhood. She understands the problems that companies have finding gravel that fits the specifications of the job to be done. Hopefully the gravel will not be in zoned residential neighborhoods, but if they are, a zoning variance and a short term operation could be granted. The door is not totally closed. We are not making you go through another level of regulation. If zoning is intact, such as in her neighborhood since the 70's, then the operation would have had to get a variance. We were told that we could not stop this type of gravel operation or the asphalt or concrete plants. We just have a way to deal with that in the zoning board. Senator Harding stated that sand and gravel beds usually lie along a river, and so that is where residents want to live and congregate. So you can see why this will be an ongoing battle if there are going to be sand and gravel operations. Ms. Tulley agreed, but she said for the most part, not many areas of the state is affected because there are not many areas that have zoning in place. Missoula County is one that has had zoning in place. In other states, if zoning is in place, the board goes to the property and decides if this is an area where sand and gravel would need to be mined. This is all in the proper zoning and planning process. In Montana, we have not done this, and the zoning has gone into place with no forethought about these types of situations.

Closing by Sponsor: Representative Raney said that it is interesting that the opponents say that existing statute are good enough. All the hoops they jump through now, the permission from the landowner, getting the permit, give public notice, and prepare a disclosure, but they get to do the operation anyway. What took place in his county, was a residential area established property values and rights. Then an entrepreneur comes along and puts in a gravel pit. He can haul it cheaper. In the mean time, all the adjoining neighborhood loses its property value. It is authenticated in the 5 acre sites south of Livingston where the proposal to put in a gravel operation was incredibly opposed by all the residents, 400 people protested, but they could not stop it. Does this makes sense. People living across the road have children with asthma, and it is caused by dust. They have to move when the pit opens. Whose private property is now being affected when you say you can't open the pit? This case, hundreds of property owners figured the value of their land would be depreciated by the opening of the pit. So who's property rights come first? The first property owners there or the newcomer with the sand and gravel pit? We are talking residentially zoned, so this is areas around our cities. People have established schools, and then there is a mining operation in there. We would not allow an oil well to be next to a school. We do not allow other industries that destroy the value of the residential property located there. We don't allow railroad repair shops to be located there. The only industry that can go into a residential area, and destroy the land value around them unrestricted, is sand and gravel operations. This does not make sense. We are not denying the use of property for those

operations already there. They are grandfathered in to this, and so are their expansions. This bill will only affect new sand and gravel operations in residential areas that are presently zoned. If they are not zoned currently then you open a gravel operation, and then they zone out around you, you are not affected by this bill. They can not throw you out. Someone commented that it might be easier to site a pit by local government, but that can't be because local government can not prevent the siting of a pit. Local government has no control. The only thing that can prevent the siting of a pit in a zoned residential neighborhood at this time, is if the cost of remediation of the pit imposed by the department are so high that the operator decides not to open it. So local government can't do that. Representative Raney said this bill addresses the property rights of one person versus the property rights of another. The people who are already there are the one's whose property rights are going to be violated by somebody else moving in. He thinks to pass this bill only makes good sense to protect zoned residential areas.

Senator Bengtson told all the people concerned about these bills that Executive Action will be taken Thursday, March 21, 1991, and they are all welcome at that time. The people from the state lands were asked to be there to answer any technical questions.

ADJOURNMENT

Adjournment At: 5:50 p.m.

Esther Bengtson
ESTHER BENGTSON, Chairman

Joyce Inchauspe-Corson
JOYCE INCHAUSPE-CORSON, Secretary

EB/jic

DATE MARCH 19, 1991

COMMITTEE ON SENATE LOCAL GOVERNMENT

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
Mike T Mason	TCI cablevision [illegible]	707		X
JOE W. HOLLAND	ROUNDUP CABLE	707		X
John Balock	Mel-View Cable	707		X
Peggy Jacobs	ABC Cable	707		X
[illegible] Watt	TCI Cablevision Kalispell	707		X
Bert Watts	Billings/Miles City, Sidney TCI Cablevision	707		X
Steven Troxel	TCI Cablevision Missoula, MT	707		X
Andrew M. Bostwick	Butte, MT	707		X
Michael D. Miller	Libby MT	707		X
Doug Rice	Helena MT TCI Cablevision	707		X
WES HUFFMAN	TCI CABLEVISION, GT. FALLS	707		X
CLYDE TARVIS	MYSELF	707	X	
Steve Dacmaier	TCI Cablevision, Butte, Anaconda, Dillon	707		X
MARK LANGDON	ASSCMT	HB 650	X	
Don Denshaw	Wheatland Electric & Cable TV	707		X
Ken Young	Cable Montana	707		X
Paul Spengler	BRING BACK WON	707	✓	
Dan Dawson	MT Dept Health	536	✓	
Wm Morgan		707	✓	
Paul M. [illegible]	United Industries	952		X
Meredith Reitan	Empire Sand & Gravel	952		X
LINDA STOLL-ANDERSON	LEWIS & CLARK County	HB 707	✓	
Tom Glendenning	TCI CABLEVISION - HELENA	HB 707		X
Micky Murray	TCI HAVRE Chinook HARLEM & MALTA	HB 707		X
LINDA STOLL-ANDERSON - MT Assn Counties		HB 952	✓	
Tim Bergstrom	MT STATE FIREMENS ASSOC	HB 650	X	

DATE MARCH 19, 1991

COMMITTEE ON SENATE LOCAL GOVERNMENT

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
JAMES TUTWILER	MT Chamber Commerce	HB 707		✓
Bruce Sherman	MT Fire Dist Assoc	HB 536	✓	
[illegible]	RAC VOL. FIRE CO.	# 536	✓	
R Budd Gould	SelR	707		✓
[illegible]	MPEA	650		
Tom Harris	MT Cable T.V. Assoc	707		✓
GD. PEARSON	Common Cause / Montana	650	✓	
Phil Campbell	MEA	650	✓	
Don Judge	MT STATE AFL-CIO	HB650	✓	
Thomas Ellerd	HD 49			✓
Sheila Rice	~~Self~~ Self	HB707	✓	
Alice Tully	Montana Ed Association, Montana	HB 650	✓	

ROLL CALL

SENATE LOCAL GOVERNMENT COMMITTEE

DATE 3-19-91

52 LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Beck			X
Senator Bengtson	X		
Senator Eck	X		
Senator Hammond	X		
Senator Harding	X		
Senator Kennedy	X		
Senator Thayer	X		
Senator Vaughn	X		
Senator Waterman	X		

Each day attach to minutes.

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 17
DATE 3-19-91
BILL NO. HB-952

HB 952: Fact Sheet

March 19, 1991

What HB 952 does:

* Provides for an orderly development of sand and gravel pits in areas already zoned.

* Allows sand and gravel pits presently operating or under contract prior to February 23, 1991, in zoned areas to continue their operations as permitted.

* Notification to the Department of State lands by January 1, 1992, allows contiguous land presently not under contract to be mined when it is adjacent to an operating sand and gravel operation. A form will be provided by DSL.

* By June 1, 1991, DSL shall mail notice of the provisions and passage of this act and the form to each person who holds a current contract.

* Affects areas only where zoning is already in place.

What HB 952 does not do:

* Does not stop existing sand and gravel operations.

* Does not make zoning a must for counties.

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 19
DATE 3-19-91
BILL NO. HB-952

STATEMENT OF
KEN DUNHAM, Manager
Montana Contractors' Association
before the
Senate Local Government Committee
HB 952

March 19, 1991

House Bill 952 is purported to be a compromise bill after the defeat earlier this session of HB 484 in the House Natural Resources Committee. That bill would have prohibited any sand & gravel, asphalt processing, concrete operation, or similar operation within one-half mile of a residence. Wisely, that bill was killed.

Now we're faced with just one more attempt to unfairly restrict this segment of the construction industry by throwing up a totally unnecessary restriction by moving the regulation of such operations from the Department of State Lands to local zoning and planning boards.

Right now, in order to open a gravel pit, the contractor must obtain the rights to the gravel from the owner if he doesn't already own the land, submit a reclamation plan to the State Department of Lands and obtain approval, furnish a reclamation bond for the project, obtain a air quality permit, give public notice on the project, and even have an archaeological survey of the area to be mined.

That's a substantial amount of regulation and protection for the public. It should be emphasized that the system has worked well under the administration of the Department of State Lands.

The current system provides uniformity throughout the state, and allows the contractor to know what he is getting into when he begins the process.

To change the system from the current state law would do nothing other than add an additional level of bureaucracy and needless regulation, delay construction projects and perhaps even prevent them from occurring at all, and would add to the cost of construction projects - both public and private.

We urge you to reject House Bill 952 and leave the regulation where it rightfully belongs.

UNITED INDUSTRY, INC.

March 19, 1991

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 20
DATE 3-19-91
BILL NO. HB-952

Re: House Bill No. 952
Proposal to Require Sand & Gravel Open Cut Mines and Concrete and Asphalt Processing Facilities to Comply with Local Zoning Regulations

Gentlemen:

I am urging you to oppose the above-referenced bill. The Montana Department of State Lands does an excellent job of administering existing legislation. They are very responsive to local issues and residents needs.

I believe that further restrictions on business in unwarranted. The restrictions placed on gravel plants, concrete plants, and asphalt plants may be discriminatory.

Please take a minute and read the attached article by Senator Symms of Idaho.

If this legislation is passed, I believe the property owners will have the right to sue local zoning agencies and will probably collect claims that these local governments can ill afford.

This is bad legislation. Please do not allow this bill to get out of committee.

Sincerely yours,

UNITED INDUSTRY, INC.

Paul M. Foster
President

cc

Enclosure

P.O. Box 30238 • Billings, Montana 59107 • (406) 255-7100 • FAX (406) 255-7125

IN DEFENSE OF PRIVATE PROPERTY

BY SENATOR STEVE SYMMS (R-IDAHO)

A scholar with the Congressional Research Service called it "inevitable." As American industry expands, resources are developed, and population grows, government will attempt to control this growth with increasing levels of regulation. Eventually this regulation will "collide with constitutional property rights."

The day of that "collision" is here. Almost every day the federal government issues a new ream of regulations restricting the use of private property. And the courts are finding that this regulation treads on private property rights, necessitating "just compensation" to the owner.

The U.S. Government currently faces more than $1 billion in claims that it has usurped the private property of individuals. In just three such cases last year, the U.S. Claims Court awarded compensation totaling more than $120 million. And in California, those property owners who can afford to sue the government are winning in the intermediate appeals courts more than half the time.

The principle that government can "take" private property inadvertently through over-regulation (as compared to official condemnation) is not new. Justice Oliver Wendell Holmes Jr., writing the Supreme Court opinion for the 1922 case, *Pennsylvania Coal vs. Mahon*, made it clear: "If regulation goes too far, it will be considered a taking." In recent years, the Court has not been shy in applying this principle, either. Beginning in 1987, we have seen what another Congressional Research Service legal expert calls "a Court trend supporting increased protection of private property against governmental controls."

Regulations that interfere with business, development, and construction top the list of those likely to be found violating private property rights. For example, the courts have found that under certain circumstances the U.S. Government "takes" private property rights when it does the following:

- ☐ Cancels a lease. *(United Nuclear Corporation vs. United States)*
- ☐ Denies a building permit. *(Nollan vs. California Coastal Commission)*
- ☐ Prohibits mineral development. *(Whitney Benefits vs. United States)*
- ☐ Denies a Clean Water Act 404 (wetland) permit. *(Florida Rock vs. United States)*
- ☐ Restricts an owner's ability to sell property. *(Hodel vs. Irving)*
- ☐ Denies a water right. *(U.S. vs. Great Falls Manufacturing)*

Some argue that these abrogations of property rights are necessary to address the problems of urban growth and industrial pollution. But there is mounting evidence that American progress on environmental protection may be attributable to, not in spite of, our private property heritage.

The environmental conditions in the newly formed democracies of the world certainly teach us the role that private property plays in environmental protection. The nation's top environmental regulator, EPA Administrator William Reilly, upon returning from an Eastern European tour, noted that "many environmental principles were undefendable in the absence of private property." At a conference last September in Moscow, one speaker said it this way:

Environmental problems are the natural consequences of an absence of property rights. Lacking individual protection, a resource is at risk...Only property rights can effectively integrate environmental and economic values. [After all,] private property universally tends to be better cared for than common property.

In truth, private property is every bit as essential to a healthy, democratic society as are any of the other basic civil rights guaranteed by our Bill of Rights. Just as we require federal agencies to respect civil rights in the course of regulating, we should demand that they respect private property as well.

That is why a bipartisan group of senators (led by David Boren of Oklahoma and myself) have introduced the Private Property Rights Act of 1991, Senate bill S. 50. The act requires federal agencies to consider the impact of their regulations on private property. The Attorney General has described the bill as "an important commitment to private property, which agencies should heed."

The President's Council on Competitiveness made this finding: "This legislation will give private citizens a chance to be heard in court, if they believe the government has not properly followed its procedures to make sure it does not take private property without just compensation."

Do property rights merit such protection? Consider this: What do we have that Soviet citizens want most? Access to luxury? Technology? No. They are demanding what we can no longer take for granted: the right to private property.

WHAT YOU CAN DO

- ☐ Contact your senators and representative and ask them to cosponsor the Private Property Rights Act of 1991.
- ☐ Seek resolutions endorsing S. 50 from trade associations, local governments, chambers of commerce, etc.
- ☐ Write a "letter to the editor" for your local paper, highlighting S. 50 and calling for support.

BARNARD CONSTRUCTION COMPANY, INC.

P.O. Box 99 ○ Bozeman, MT 59771-0099 ○ (406) 586-1995 ○ FAX (406) 586-3530

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 21
DATE 3-19-91
BILL NO. HB-952

March 19, 1991

Senate Local Government
Sen. Esther Bengtson, Chairman
State Capitol
Room 442
Helena, Montana

Ladies and Gentlemen:

We oppose House Bill 952, requiring sand and gravel open cut mines and concrete and asphalt processing facilities to comply with local zoning regulations. We are a small business and construction company in Montana and wish to express our concern to your committee concerning this legislation.

We believe this bill can be dangerous for the Montana construction industry. It is taking control away from the Department of State Lands and putting it into control of local zoning boards. This is adding another level of "red tape" and bureaucracy to an already struggling industry in Montana.

Please consider the consequences. This is NOT a good bill, and we urge you defeat this legislation. Thank you for your consideration to this matter.

Sincerely,

Timothy Barnard

Timothy Barnard, President
Barnard Construction
Company, Inc.
Bozeman, Montana

Fisher Industries

Mining Our Business

March 19, 1991

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 22
DATE 3-19-91
BILL NO. HB-952

The Honorable Esther Bengtson, Chairman
Capitol Station
Helena, MT 59620

Dear Senator Bengtson:

House Bill 952 will be heard today before the Senate Local Government Committee. This bill puts the control of sand, gravel, concrete and asphalt operations under the control of local zoning boards.

Currently such operations are regulated by the Department of State Lands and the system works quite well. We strongly oppose HB 952. This is a bad bill for the construction industry and a bad bill for local governments.

It is not fair to local governments to expect them to control these activities when they are not qualified to do so. The Department of State Lands is qualified and capable of this activity and it is in the best interest of the state for this regulation to remain with that department.

As a contractor who works in many locations, we would be dealing with as many sets of regulations as locations we work in, by passing this bill. Passing this bill will create problems for the contractors and local governments. The Department of State Lands is adequately regulating this activity now, and as the adage says "If it ain't broke don't fix it."

Please consider the problems passing this bill could create, and oppose HB 952 in todays hearing. Thank you.

Sincerely,

FISHER SAND & GRAVEL CO.

Amiel Schaff

Amiel Schaff
V.P. Administration

AS:dt

3-18-91

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 23
DATE 3-19-91
BILL NO. HB-952

From: Kenneth L. Ruggles
Livingston Ready Mix, Inc.
Box 227
Livingston, Mt. 59047

To: Sen. Boylan
Capital Station
Helena, Mt 59620

Dear Senator:

I strongly urge you to OPPOSE HB 952. The current laws are working well and I feel the changes would not be of any value.

Thank you,

Kenneth L Ruggles

Kenneth L. Ruggles, owner

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 24
DATE 3-19-91
BILL NO. HB-952

3-18-91

Senate Local Government Committee
Capitol Station
Helena, MT 59620

Re: House Bill 952 - Requiring sand and gravel open cut mines and concrete & asphalt processing facilities to comply with local zoning regulations.

Dear Senator,

Jim Gilman Excavating, Inc. is a company engaged in heavy and highway construction in Western Montana. We also crush and stockpile gravel for various City, County, private, and MDOH maintenance projects. We operate two portable crushing plants and two portable hot plants. We operate in 15 to 20 different pit sites each year. We urge you to vote against House Bill 952.

Gravel pit activities are already heavily regulated. In order to go into a gravel pit at the present time an operator must: make an agreement with the landowner, submit a reclamation plan to the Department of State Lands and obtain their approval, furnish a bond to insure that money is available to complete the reclamation work, obtain a permit from the air quality bureau, give public notice in a local newspaper and wait during a 15 day public comment period, and have an archaeologist evaluate the site in order to demonstrate to the State Historic Preservation Office that there are no historic or cultural resources present at the site.

The above described process is cumbersome but we believe that it does adaquately protect the public, inform them, and gives them an opportunity for comment and input. Additional regulation by the zoning boards would be redundant, counter-productive, and would place an unreasonable burden on our industry.

At the present time we deal with State agencies to permit gravel pits. These agencies are accessible and the regulations & procedures are uniform no matter the gravel pit is located. Zoning regulations and procedures vary widely and in many locations there are no full time employees. We would be dealing with zoning boards who meet infrequently. These boards are not accessible and we doubt that these boards could act quickly enough to allow us to meet the demanding timetables of many highway projects.

3105 ROSSETTI • BUTTE, MONTANA [illegible] • [illegible] • FAX [illegible]

Our gravel operations are usually short - term and temporary in nature. The gravel pits are mostly on agricultural or grazing land and after a road project is complete, the pit is reclaimed and returned to this use. Our experience has been that zoning regulations are not well suited to temporary operations of this nature. We forsee problems with land classifications and with landowner rights & relations.

In summary, we feel that there are adequate regulations now in place. We urge you to vote against House Bill 952. This bill would place an undue burden on our industry, could cause delays in construction projects, and would ultimately increase the cost of highway construction and crushing work in Montana. Thank you for your consideration of this matter.

Sincerely,
Jim Gilman Excavating, Inc.

James C. Gilman, President

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 25
DATE 3-19-91
BILL NO. HB-952

WASHINGTON CONSTRUCTION COMPANY

101 INTERNATIONAL WAY
POST OFFICE BOX 8999
MISSOULA, MONTANA 59807
TELEPHONE: (406) 523-1201
FAX: (406) 728-9265

March 18, 1991

Senator Esther Bengtson
Capitol Station
Helena, MT 59620

RE: House Bill 952
Requiring Sand and Gravel Open Cut Mines and
Concrete and Asphalt Processing Facilities to
Comply with Local Zoning Regulations

Dear Senator Bengtson:

I am writing to request your support in defeating House Bill 952. This bill has very serious implications for the heavy and highway construction industry.

Currently the operations for sand and gravel and asphalt operations are regulated by the Department of State Lands. This method of oversight allows for uniform enforcement of regulation throughout the state. If this centralized authorization is fragmented and given to the localities, it can lead to chaos, delayed or incomplete projects, and potential major economic loss for the contractor.

Most public works projects are bid with demanding yet realistic time lines for completion. The method for permitting operations is well known and understood by the regulators and the contractors and allows for the permitting of temporary facilities.

The entry of numerous local regulators into the process with varying and shifting requirements makes the risky process of bidding work even riskier. And unnecessarily so! The method of regulating these entities through the Department of State Lands is functioning adequately now. There is no compelling reason, no overriding community concern, which warrants this change. In short, it is a case of "if it ain't broke, don't fix it."

I personally feel this bill is a bad piece of legislation. It modifies a smoothly functioning system, introduces unknown and unnecessary risks for the business community, and provides no greater protection to the environment than is in current law.

I hope you will review this measure and concur with me that it should be defeated before your committee.

Sincerely,

D. A. Peressini
President

/lj

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 26
DATE 3-19-91
BILL NO. HB-952

March 14, 1991

Senator Esther Bengtson
Capitol Station
Helena, MT 59620

Re: House Bill 952 - Requiring Sand & Gravel Open Pit Mines and Concrete & Asphalt Processing Facilities to Comply with Local Zoning Regulations..

Dear Senator Bengtson,

House Bill 952 must be defeated. Currently the control of sand, gravel, concrete, and asphalt operations are regulated by the Department of State Lands. This structure of control seems to work well. Involvement by local government officals is deemed expendable.

I urge you to defeat House Bill 952. It is not in the best interest for Montana or the construction industry.

Best regards,
E. H. Oftedal & Sons, Inc.

W. T. Oftedal

W. T. Oftedal
President

JIM'S READY MIX

P.O. BOX 915 · EAST OF TOWN · END OF MARCELLA AVE. · LEWISTOWN, MONTANA · PHONE (406) 538-3463

JAMES R. MC DONALD, PRESIDENT

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 27
DATE 3-19-91
BILL NO. HB-952

March 15, 1991

Senator Bengtson
Capitol Station
Helena, Mt. 59620

Dear Senator Bengtson:

I am writing regarding HB 952 requiring sand and gravel and open cut mines and concrete and asphalt processing facilities to comply with local zoning regulations.

As I understand this bill, it would take the authority away from the Department of State Lands and give it to zoning boards at local levels. It appears that the local zoning boards wish to take control of the land from the owner where it has been and should remain.

This, in turn, will cause the price of materials to rise and will create problems in construction of new homes, sidewalks, commercial building, etc.

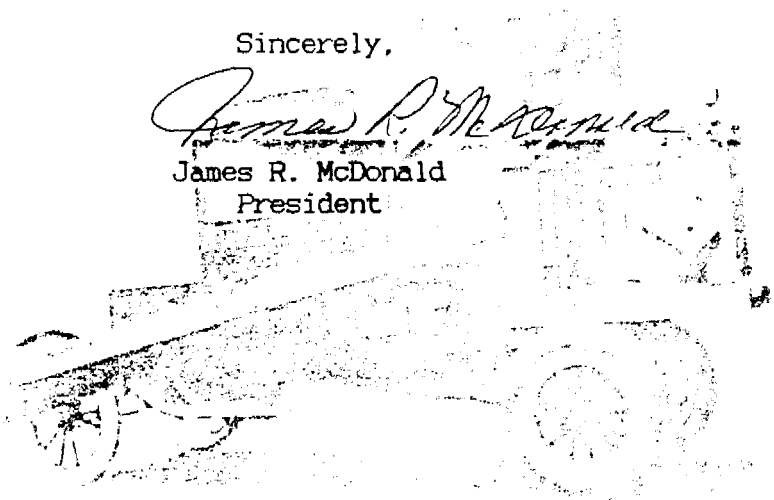
I believe HB 952 is attempting to fix something that is not broken and seems to be a waste of time for the Legislators as well as a waste of tax payers money.

I strongly urge you to vote NO when this bill comes before you.

Sincerely,

James R. McDonald

James R. McDonald
President



PORTABLE PAVERS INC.
Box 368
Yellowstone Hill
MILES CITY, MT 59301

Phone 232-5855

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 28
DATE 3-19-91
BILL NO. HB-952

March 15, 1991

Sen. Esther Bengtson, Chairman
Capitol Station
Helena, MT 59620

RE: HOUSE BILL 952

Dear Senator:

House "Bill 952 is a dangerous piece of legislation that could put a local operation out of business with a beligerant land owner having ties to local government.

These operations are currently regulated by State Lands, as it should be.

I am urging you to oppose House Bill 952

Sincerely,

Harold E Gierke

Harold E. Gierke
President

3-18-91

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 23
DATE 3-19-91
BILL NO. HB-952

From: Kenneth L. Ruggles
Livingston Ready Mix, Inc.
Box 227
Livingston, Mt. 59047

To: Sen. Bengtson
Capital Station
Helena, Mt 59620

Dear Senator:

I strongly urge you to OPPOSE HB 952. The current laws are working well and I feel the changes would not be of any value.

Thank you,

Kenneth L Ruggles

Kenneth L. Ruggles, owner

Senator Vaughn said that she had talked with the Libby cable company and there are problems with the t.v. districts. The cable t.v. company provided her with a stack of letters supporting what they do for the community. Local government can't afford to put this kind of money into the community.

Recommendation and Vote: The motion to Do Not Concur in HB-707 passed unanimously, and was recorded as a roll call vote. Senator Eck did not vote because she did was not present at the hearing. Senator Thayer will carry the adverse committee report.

EXECUTIVE ACTION ON HB-952

Motion: Senator Harding moved to Do Not Concur in HB-952.

Discussion: Senator Bengtson asked Steve Welch, Department of State Lands, to answer some questions she had. She asked what the department's rules and regulations are about siting gravel pits? What consideration is given to local zoning that exists in a proposed area? Mr. Welch said that the way the current zoning statutes read the local zoning can not restrict the complete use or recovery of any natural resource including sand and gravel. So as it is now, the local zoning official do not have any control. We receive an application that may lie in a zoned residential area, and we do discuss it with the county authorities and any other state organization. Through the application procedure, the Opencut Mining Act, we try and put as many mitigating measures on these sites that will reduce the impact to neighboring residential areas. These measures may be large vegetative topsoil bermes to deflect some of the noise, vegetative screens to absorb noise and cut down on visual deterioration, restriction of operating hours of crushing or mining operation, fencing of entire operation for safety, and we restrict hauling through nearby subdivisions. But when the application complies with the Opencut Mining Act, despite it is in a zoned residential area, there is no way we can deny it based on that one reason. If the department can't prove that the operation will not affect the taxable value of the property, and also complies with the act. Senator Bengtson asked if taxable property valuation is considered? Mr. Welch said the Act states that we have to protect and perpetuate the taxable value of the property. Anything that may be affected by the Opencut Mining operation is taken into consideration. As yet, there have been

no verified instances where taxable value has been reduced from the siting of one of these operations. Senator Bengtson asked how many complaints do they receive per year? Mr. Welch said they get a number of complaints, and may be two or three applications have this as a problem. This is not necessarily always in an area zoned, but just sites near other rural subdivisions.

Senator Bengtson tried to clarify that the department just has two or three problem applications? Mr. Welch said they have that number in those sites located in a zoned residential area.

Senator Hammond asked why core samples are not taken when the law is stated this way? Mr. Welch said he agreed that this would be the best policy to solve this problem. Identify all the areas sand and gravel potential in these rapid growth areas, and then restrict development around those identified until the sand and gravel can be mined.

Senator Eck said that the Gallatin Planners have said that the best place for a subdivision is were there is sand and gravel for housing and streets instead of eating up the agricultural sites. How many areas of the state have a scarcity of gravel? Senator Hammond said in his area they can't find it for miles. Mr. Welch said it depends on the area, and the specifications for the gravel.

Senator Waterman said she is troubled by the fact that you can have a sand and gravel pit put into a subdivision. Does the department feel that there is a need for this bill, or do they belong in these residential areas? Mr. Welch said the department does not take a stand on this. The things we have done to try to reduce the impact are the maximum that we can do when we review a sand and gravel application. Senator Waterman said that as the department goes through the restrictions that they use, the hours to operate, the landscape, etc. that we are creating headaches for the department, sand and gravel pits, and the neighbors. We have two incompatible things here, and this will only increase in urban areas if something isn't done now. If we pass this bill it does not affect existing sand and gravel operations, so it seems to stop this from happening in the future that this bill is the wise thing to do.

Senator Hammond said that gravel is becoming scarce. Phillips county travels 54 miles to the closest pit. It is important that they be able to mine it where they find it.

Senator Vaughn said that the Livingston site testimony was that

there was terrible dust created and is this part of the department's consideration? Mr. Welch said yes, and through the DHES through the Air Quality Permit, and the Department of State lands require a spray bars in the crushers to keep dust down, and other dust control measures.

Senator Thayer added that he was told that this example was not fairly stated. The sand and gravel operation had been there before the residential homes were built. Mr. Welch said that was correct. The pit opened in the 50's, and then they closed and reopened after the law was enacted in 1971. People had taken out small loads before the law was in affect. The application we received was the first one to be considered under the Opencut Mining Act.

Senator Beck asked if a contractor is constructing a road, and it must be through a zoned residential area, can they get a temporary gravel pit, then under this bill they will have to get another permit from the zoning board? Mr. Welch said he understood the bill that the local zoning board would be the first to get the approval of the location of the site. Senator Beck said then before they come to the State Lands to apply for the permit, they would need to go through the zoning board first, then go through the steps to get the permit from the state. The zoning board could make it impossible to site that pit there? Does the Department of State Lands consider whether that area is zoned or not? Mr. Welch said they do not have a state wide zoning map. However they do research it if we feel it might likely be zoned. The zoning board has no authority over us. Senator Beck said we a temporary pit is reviewed, are attempts made to comply with the residents in the neighborhood? Mr. Welch said they do work with the adjacent residential areas and the operators as much as possible to work out a compromise.

Senator Bengtson asked what comes first? Mr. Welch said that the operator would go through zoning authority first, and then they would send us verification that the operator is in compliance with local zoning regulations. Senator Bengtson asked how many new applications the department gets per year? Mr. Welch said about 250 new applications.

Senator Eck said she understood that current law states that a gravel pit can be put in a residential neighborhood, and also they can put in a batch mix, a concrete plant, etc. In Bozeman there is an area that they wanted to put in an asphalt plant in an area of mixed residential and light industry. They were turned down because they were too close to a residential area for that kind of operation. Had they put in a sand and gravel pit

first, then they would have been o.k.? Mr. Welch said it depends on where the area lies. The enabling legislation for zoning comes under two separate parts, and the cities zoned areas may restrict sand and gravel mining. The Supreme Court ruled that crushers and asphalt plant are an integral part of the mining operation, and as such they could not be restricted either. Senator Eck said in this rural area, the county could restrict a cement plant or asphalt plant if they are not associated with a sand and gravel operation? Mr. Welch said he was not sure. He said they do not regulate, through the Opencut Mining Act the crushers and asphalt plants if they are not associated with a sand and gravel operation.

Senator Harding said of the 250 permits, how many of them are new permits? Mr. Welch said those are all new permits. Senator Harding said in regards to the 2 or 3 complaints received per year, the department contacts the business, and do they cooperate and meet the specs and regulations that you advise them of. Mr. Welch said anytime they get an application that is near a residential area, after the environmental assessment is prepared, we hold a public meeting to discuss the entire operation. We try to work out what can be done through the Opencut Mining Act. Senator Harding said he misunderstood what she asked. When they have complaints, how are they handled? Mr. Welch said he needed to back up. They have many more than 2 or 3 complaints per year. He meant that they have 2 or 3 applications that may impact a residential area. Senator Harding said she understood that, but how does the department handle those complaints? Mr. Welch said they are not actually complaints. They do try to weigh all the concerns of those affected citizens in to consideration when they review the application. We try to decide which concerns we can address under the Opencut Mining Act. Some we can't touch, but the ones we can then we do.

Senator Eck made a substitute motion to Concur in HB-952.

Discussion, and Votes: Senator Thayer said that this bill wants to involve local government planning and zoning boards that have admitted that can't find people to serve on these boards. We will take this efficient operation away from the State Lands that acts as an independent reviewer, and put it in the hands of local zoning boards. We will really create problems. There is a comfort level in the current system, and if it ain't broke, don't fix it.

Senator Harding this is an anti-business bill. It will shut down future sand and gravel operations.

Senator Eck said she thought this was a property rights bill. Your ability to dig gravel stops where my property begins. This could ruin a person's life. Your home is your castle, and this could destroy that dream.

Recommendation and Vote: The vote on the substitute motion to Concur in HB-952 failed 2 to 7. Senators Eck and Waterman were the minority voting for the motion, and was recorded as a roll call vote.

Senator Harding's motion to Do Not Concur in HB-952 passed 7 to 2, and was recorded as a roll call vote. Senator Harding will carry the adverse committee report.

Senator Waterman said Senator Farrell has requested a Minority Report. The secretary will request one, and Senators Eck and Waterman will sign on it as the minority.

ADJOURNMENT

Adjournment At: 4:38 p.m.

Esther Bengtson
ESTHER BENGTSON, Chairman

Joyce Inchauspe-Corson
JOYCE INCHAUSPE-CORSON, Secretary

EB/jic

ROLL CALL

SENATE LOCAL GOVERNMENT COMMITTEE

DATE 3-21-91

52 LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Beck	X		
Senator Bengtson	X		
Senator Eck	X		
Senator Hammond	X		
Senator Harding	X		
Senator Kennedy	X		
Senator Thayer	X		
Senator Vaughn	X		
Senator Waterman	X		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE LOCAL GOVERNMENT

Date 3-21-91 Bill No. HB-952 Time 4:37

NAME	YES	NO
SENATOR BECK		X
SENATOR BENGTSON		X
SENATOR ECK	X	
SENATOR HAMMOND		X
SENATOR HARDING		X
SENATOR KENNEDY		X
SENATOR THAYER		X
SENATOR VAUGHN		X
SENATOR WATERMAN	X	

JOYCE INCHAUSPE-CORSON
Secretary

ESTHER BENGTSON
Chairman

Motion: Do Concur in HB-952

Failed

ROLL CALL VOTE

SENATE COMMITTEE LOCAL GOVERNMENT

Date 3-21-91 Bill No. HB-952 Time 4:38

NAME	YES	NO
SENATOR BECK	X	
SENATOR BENGTSON	X	
SENATOR ECK		X
SENATOR HAMMOND	X	
SENATOR HARDING	X	
SENATOR KENNEDY	X	
SENATOR THAYER	X	
SENATOR VAUGHN	X	
SENATOR WATERMAN		X

JOYCE INCHAUSPE-CORSON
Secretary

ESTHER BENGTSON
Chairman

Motion: move to Do Not Concur in HB-952

SENATE STANDING COMMITTEE REPORT

March 22, 1991

MR. PRESIDENT:

We, your committee on Local Government having had under consideration House Bill No. 952 (third reading copy -- blue), respectfully report that House Bill No. 952 be not concurred in

Signed: _____
Esther G. Bengtson, Chairman

_____
Amd. Coord.

_____
Sec. of Senate

MINORITY REPORT

SENATE STANDING COMMITTEE REPORT

March 22, 1991

MR. PRESIDENT:

We, the minority of the committee on Local Government having had under consideration House Bill No. 952 (third reading copy blue), respectfully report that House Bill No. 952 be concurred in.

Signed: _____
Dorothy Eck

Signed: _____
Mignon Waterman

3-22-91
Amd. Coord.

3:00
Sec. of Senate

621 House Bill

MAJORITY REPORT

SENATE STANDING COMMITTEE REPORT

March 22, 1991

MR. PRESIDENT:

We, the majority of the committee on Local Government having had under consideration House Bill No. 952 (third reading copy -- blue), respectfully report that House Bill No. 952 be not concurred in.

Signed: _____
Esther G. Bengtson, Chairman

3-22-91
Amd. Coord.

Sec. of Senate